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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,742	08/14/2003	Wilhelm Geis	A91717	1741
30008	7590	01/25/2007	EXAMINER	
GUDRUN E. HUCKETT DRAUDT			DOVE, TRACY MAE	
LONSSTR. 59			ART UNIT	PAPER NUMBER
WUPPERTAL, 42289			1745	
GERMANY				
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE		DELIVERY MODE	
3 MONTHS	01/25/2007		PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/604,742	GEIS ET AL.	
	Examiner	Art Unit	
	Tracy Dove	1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 August 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,5,6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5,6 and 8-10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the communication filed on 8/16/06. Applicant's arguments have been considered, but are not persuasive. Claims 1-3, 5, 6 and 8-10 are pending. This Action is made FINAL, as necessitated by amendment.

Claims Analysis

Claims 1 and 10 recite "for an electric power tool that comprises a tool housing with an electric motor arranged therein and a handle connected to the tool housing", which is not given patentable weight because it is an intended use limitation. All limitations of the claimed invention that recite elements of the electric power tool are not given patentable weight because the claims recite "A battery pack".

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 5, 6 and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "first and second individual battery cells", which indicates only two battery cells. However, claim 1 recites "first individual battery cells", which indicates a set of battery cells. It appears claim 1 should recite "first and second sets of individual battery cells", "first set of individual battery cells" and "second set of individual battery cells" in order to clearly claim the invention. Examiner suggest this amendment also be made to claims 2-10.

Claim 1 recites “first individual battery cells …are arranged sequentially behind one another in two parallel rows in a first portion of the protective housing provided with a first portion of the support surface”. Claim 1 further recites “wherein the two rows each have a first one and a last one of the first individual battery cells, viewed in the longitudinal direction, and said first one and said last one of the first individual battery cells are positioned at the first and second end faces, respectively”. Claim 1 further recites “a gap” is provided “between the first individual battery cells of the two parallel rows, respectively”. It is unclear how first individual battery cells of the “two parallel rows” are contained at both a first end face and a second end face if the two parallel rows are contained in the first portion of the protective housing. Furthermore, it is unclear how a “gap” is provided between first individual cells of the two parallel rows if the cells of the rows are “arranged sequentially behind one another”. Furthermore, it is unclear what the term “respectively” in line 30 of claim 1 is attempting to limit. See also claim 10, which should be amended accordingly.

In claim 8, it is unclear what the term “respectively” is attempting to limit. Furthermore, “approximately half a diameter of the first and second individual cells” is indefinite. The claim does not require the diameter of the first individual cells be equal to the diameter of the second individual cells (this limitation is in claim 9).

To the extent the claims are understood in view of the numerous 35 U.S.C. 112 rejections above, note the following prior art rejections.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 6 and 8-10 rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar et al., US 6,018,227.

Kumar teaches a battery pack having a number of rechargeable NiCd cells 276. Figure 9 shows the inside of the battery pack 22 (11:40-45). Figure 7 shows a battery body 36 (protective housing) having a first housing side with a receiving portion and a second housing side with a support surface. Figure 9 shows rows of batteries wherein some of the batteries have been laterally outwardly displaced. Figure 9 also shows some portions of the support surface are wider than other portions of the support surface.

Kumar does not teach the specific configuration of batteries as required by the claimed invention. However, the invention as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made because the specific arrangement of batteries in the battery pack is considered a matter of design choice. The battery pack of the claimed invention and the battery pack disclosed by Kumar teach a widened support surface. Applicant has not shown any criticality regarding the particular arrangement of the battery cells within the housing of the battery pack of the claimed invention.

*

Claims 1-3, 5, 6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kopras, US 5,902,080.

Kopras teaches a power tool with a detachable battery pack. The battery pack includes an enclosed housing in which rechargeable batteries are contained. The battery pack case may be

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formed in two asymmetric halves wherein the two halves are joined together to form the complete battery pack. An inward half is adjacent a motor housing of the power tool and an outward half is opposite the motor housing. A receiving part is activated by spring clamps (6:21-62). As shown in Figure 5, some of the battery cells contained in the battery pack are displaced laterally outwardly and the portion of the pack not containing the receiving part is wider than the portion of the pack containing the receiving part.

Kopras does not teach the specific configuration of batteries as required by the claimed invention. However, the invention as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made because the specific arrangement of batteries in the battery pack is considered a matter of design choice. The battery pack of the claimed invention and the battery pack disclosed by Kopras teach a widened support surface. Applicant has not shown any criticality regarding the particular arrangement of the battery cells within the housing of the battery pack of the claimed invention.

Response to Arguments

Applicant's arguments with respect to claims 1-3, 5, 6 and 8-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tracy Dove whose telephone number is 571-272-1285. The examiner can normally be reached on Monday-Thursday (9:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 18, 2007



TRACY DOVE
PRIMARY EXAMINER